

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE INTERNATIONAL DAD TRUST,	:
PLAINTIFF,	11 Civ. 1687
v.	:
TREMONT OPPORTUNITY FUND III, L.P.,	<u>OPINION</u>
ET AL.,	:
DEFENDANTS	:
	:
	-x

This case arises out of the massive Ponzi scheme perpetrated by Bernard Madoff and Bernard L. Madoff Investment Securities. Plaintiff International D.A.D. Trust (“International DAD”) is a trust that purchased a life insurance policy. That policy allowed International Dad to designate some of its premiums for tax free investments. International DAD selected two hedge funds operated by Tremont Partners. Portions of the assets of those hedge funds were subsequently invested with Madoff and lost when the Ponzi scheme was revealed. Plaintiff asserts state law claims against defendants under the laws of New York and Texas. Defendants move to dismiss for failure to state a claim and lack of standing.

In its opposition papers, International DAD concedes that it lacks standing to pursue this action, which should have been brought by its trustee.

It argues that instead of dismissing the case, the court should order that the trustee be substituted into the action under Federal Rule Civil Procedure 17(a)(3). Defendants do not oppose the substitution of the trustee, but they argue that any substitution of the trustee should come after this court rules on the balance of defendants' motion to dismiss the case, and then the trustee can be substituted in to prosecute any remaining claims.

The court rules as follows.

Defendants' motion to dismiss is granted on the ground that International DAD lacks standing. This dismissal is without prejudice to the right of the trustee to file an amended complaint on behalf of the trustee, and further without prejudice to the right of defendants to file a renewed motion to dismiss on the non-standing grounds, if they choose to do so.

This motion resolves the documents listed as numbers 15 and 30 on the docket of case 11 Civ. 1687, numbers 676, 680, 682, and 687 in case 08 Civ. 11117, and numbers 165 and 174 on the docket of case 09 Civ. 557.

All future filings related to this case should be filed only on the docket of case 11 Civ. 1687.

So ordered.

Dated: New York, New York
September 11, 2012



Thomas P. Griesa

Thomas P. Griesa
U.S. District Judge

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